S.B.CIVIL WRIT PETITION NO.3151/2007.
Balu Ram Saini Vs. State & Ors.

Date of order :: 19th November 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Dr. P.S. Bhati, for the petitioner.
Mr. Rameshwar Dave, Dy.G.A., for the respondents.

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BY THE COURT:

The Chief Executive Officer, Zila Parishad, Rajsamand having accorded sanction under Section 19 of the Prevention of Corruption Act, 1988 ('the Act of 1988') and Section 197 of the Code of Criminal Procedure for prosecution of the petitioner, holding the post of Gram Sevak-cum-Secretary with Panchayati Raj department, for offences under Sections 13(1)(c), 13(1)(d) of the Act of 1988 and Sections 409, 420, 467, 468, 471, 477 and 120B of Indian Penal Code by his order dated 30.04.2007 (Annex.5); and the Block Development Officer, Panchayat Samiti, Rajsamand having put the petitioner under suspension under Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 by his order dated 18.05.2007 (Annex.6), the petitioner has preferred this writ petition seeking to question the aforesaid orders dated 30.04.2007 and 18.05.2007.

It has been submitted on behalf of the petitioner that he remained posted as Gram Sevak with Gram Panchayat, Majera, Panchayat Samiti, Kumbhalgarh District Rajsamand from 04.08.1998 to 31.03.2000; that during implementation of special schemes of rural developments, various work were got conducted in accordance with Basic Schedule of Rates ('BSR'); that the allegations upon the petitioner of causing loss to the public funds by making excess payments, creating forged records, making payments in the name of fictitious firms, and of embezzlement are all baseless as the technical sanction as well as actual payments were beyond his domain; that the fault, if any, lay essentially with the Block Development Officer; that though the Anti-Corruption Bureau registered a case bearing No.545/2000 for the aforesaid offences but the petitioner's name was not included therein and the same was included only after investigation; that no notice was issued to the petitioner on such investigation but the petitioner yet submitted his own reply on the allegations of escalated costs as levelled on the basis of rates as prescribed in the BSR of 1997 though the said BSR was amended on 01.09.1998 and the amended BSR was required to be taken into consideration while making valuation; that even though there was a valid reason of valuation made by the petitioner, he was unnecessarily framed in the matter with prejudice at the instance of the local politicians; and the Chief Executive

Officer without considering the factual position has proceeded to accord sanction for prosecution of the petitioner and thereby the Block Development Officer has put the petitioner under suspension.

It has been strenuously contended by learned counsel for the petitioner that the petitioner has explained by making a systematic statement about the valuation with reference to the rates applicable from 01.09.1998 that has not been taken into consideration by the authorities; that the basic responsibility in the Panchayat level work was that of Sarpanch and for Panchayat Samiti level work the responsibility was that of the Block Development Officer and in any case, the responsibility could not have been upon the petitioner who was a pigmy official conducting his duties at the instance of higher officers or Sarpanch of the Panchayat, and his role was merely of assisting as a small time employee. Learned counsel has referred to and relied upon the decisions in State (Anti Corruption Branch) Govt. of NCT of Delhi and Anr. Vs. Dr. R.C.Anand: (2004)4 SCC 615, Mansukhlal Vithaldas Chauhan Vs. State of Gujarat: 1997(8) Supreme 178, Janeshwar Das Aggarwal Vs. State of U.P.: 1981 Cr.L.R. (S.C.) 303, Guru Bipin Singh Vs. Chongtham Manihar Singh and another: AIR 1997 SC 1448, Mithan Lal Vs. The State: 1968 RLW 54 and Mohd. Iqbal Ahmd. Vs. State of Andhra Pradesh: 1979 Cr.L.R. (S.C.) 242.

Having given a thoughtful consideration to the submissions made by learned counsel for the petitioner and having examined the material placed on record, particularly the detailed order made by the authority concerned while according prosecution sanction, not only in respect to the petitioner but in relation to the then Block Development Officers, the then Junior Engineers, Sarpanch, Land Record Inspector and Patwari, this Court is clearly of opinion that no case is made out for interference in extra-ordinary writ jurisdiction.

So far the proposition of law that while according sanction for prosecution, the authority concerned is required to examine the entire material on record and the order of sanction must ex facie disclose that the sanctioning authority has considered the evidence and other material placed before it, the same requires not much of discussion. Very recently, the Hon'ble Supreme Court in the case of State of Karnataka Vs. Ameer Jan.: 2007 AIR SCW 6217 while reiterating the settled legal principles with reference to several decided cases including Mohd. Iqbal's case (supra), has been pleased to observe,-

> "7. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the

protection under the Act by refusing to accord sanction for his prosecution or not.

8. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as to the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

The decisions as referred by learned counsel for the petitioner otherwise essentially have different fact situation. In the case of Dr. R.C.Anand (supra), on the question about the authority competent to issue the order of sanction the High Court proceeded on the assumption that the sanctioning authority was the President and he sought ratification on his decision from the Governing Body of the Institution. The Hon'ble Supreme Court found that sanctioning body was not

the President but it was the Governing Body and there was no question of any ratification. Then, it was considered by the Hon'ble Supreme Court that the Governing Body before arriving at its decision of according sanction to proceed against the private respondent, considered the material placed on record and the Hon'ble Court observed that the sanctioning authority has only to say whether facts disclosed in the complaint prima facie disclose commission of offence or not and actual production of proof is required to be left for trial. Yet the Hon'ble Supreme Court cautioned that validity of sanction would depend upon the material placed before the sanctioning authority.

In the case of Mansukhlal Vithaldas Chauhan (supra) again the principle available is that validity of sanction depends on application of mind by the sanctioning authority; and the sanctioning authority has to apply its own independent mind in generation of genuine satisfaction whether prosecution ought to be sanctioned or not. The decisions in Janeshwar Das Aggarwal (supra) relating to what is requisite for prosecution to prove for bringing home a charge under Section 409 IPC or that in Guru Bipin Singh (supra) on the ingredients of offences under Section 465 and 420 IPC do not have a direct bearing on the question at hands. The decision of this Court in Mithan Lal (supra) on the general principles that whatever evidence is collected by the Investigating

Agency, the same should be placed before the sanctioning authority to enable it to form its opinion in an unbiased manner again requires not much of discussion in this case. In the said case, this Court found that the investigating agency only placed such data that were mixed up; some material was receivable in evidence and other was not; and the Collector had confined his attention to what was stated in the factual report and he did not have before him the evidence that Investigating Officer had collected. This Court said,-

> ‘’What is necessary is that the sanctioning authority should be satisfied on the evidence collected by he investigating agency that there was a prima facie case against the accused as would warrant the grant of sanction for prosecution.’’

The observations in Mohd. Iqbal’s case (supra) essentially relating to a prosecution launched without valid sanction are not of direct application but then, the principles have been stated by the Hon’ble Supreme Court that when the facts forming basis of prosecution are not mentioned in the sanction and when the grounds of satisfaction of sanctioning authority are not mentioned, the prosecution is rendered void ab-initio; and that the grant of sanction is not an empty formality but affords protection to the government servant against frivolous prosecution and the requirements must be strictly complied with before any prosecution can be launched against the public servant.

Applying the aforesaid principles from the decided cases and examining the material placed on record, this Court is absolutely satisfied that the authority concerned has precisely proceeded in conformity with law and has examined the entire material collected by the investigating agency and so also the relevant records of the concerning Gram Panchayat and Panchayat Samiti; and with clear application of mind as disclosed in the elaborate order dated 30.04.2007 (Annex.5) has accorded sanction for prosecution of the petitioner along with other authorities/functionaries for the offences aforementioned.

The submissions that the matter essentially related to the applicability of rates while carrying out valuation and that the revised rates were not taken into consideration are not of substance in the present case.

It is noticed that the allegations are wider in nature and range, ultimately culminating into the offences of misusing of public funds and causing loss to the public exchequer by creating forged records, by falsifying the records, by making payment in the name of fictitious firms and making payment beyond the work done or material purchased. It appears prima facie that substantial and cogent material has been collected by the investigating agency regarding preparation of false records showing execution of work and showing payments either at escalated rates or for the work not

done, or showing excess work done or showing payments to the fictitious firms; and complicity of the then Sarpanch, Up-Sarpanch, Block Development Officers, Junior Engineers and others alongside the petitioner in such criminal conspiracy has been amply demonstrated by the investigating agency with the relevant material. The authority concerned while granting prosecution sanction seems to have meticulously examined the entire relevant record before forming the opinion that the case was fit enough for according prosecution sanction and there does not appear any infirmity in the sanction order passed by the authority that might require interference in extra-ordinary writ jurisdiction.

The submission that the petitioner as a Gram Sevak was merely a pigmy official conducting his duties at the instance of the other officers and has no independent role to play has no meaning or bearing on the subject matter of the case nor appears to be correct either. It is noticed from the elaborate prosecution sanction order that substantial part of the questioned record and documents relating to the disputed payments and disputed work have been prepared with active participation of the petitioner. Even otherwise as a Gram Sevak-cum-Secretary, the petitioner was under obligation, inter alia, to get the sanctioned work executed under the supervision of the Committees of Panches and to maintain muster rolls and other accounts of construction work. The

present one being directly a case of allegations of falsification of muster rolls and other accounts of construction work, the suggestion of the petitioner being not related thereto or being not responsible therefor cannot be accepted. With the allegations being of criminal conspiracy too, the petitioner cannot avoid his responsibility in the matter.

The present one being a petition for writ against the order of prosecution sanction and having examined the order passed by the sanctioning authority, this Court being satisfied that the order has been passed with clear application of mind on all the relevant material and no case is made out for interference, it appears appropriate not to dilate further on the allegations against the petitioner lest it causes any prejudice in the proper trial of the case before the court concerned. Suffice is to conclude with the observations that there is no infirmity in the order of prosecution sanction.

Other part of the challenge by the petitioner to the order putting him under suspension remains baseless. The authority concerned cannot be said to have committed any error in putting him under suspension with trial for criminal offences being under way with according of prosecution sanction.

The writ petition fails and is, therefore, rejected.

MK **(DINESH MAHESHWARI),J.**